

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Patent Application of:
Sean Mullaney et al.

Conf. No.: 2386

Appln. No.: 10/068,973

Filing Date: February 7, 2002

Title: Remote-Controlled Tractor Trailer Toy

:
:
:
: Group Art Unit: 3712
:
: Examiner: Ali F. Abdelwahed
:
: Attorney Docket No.: 4110-163US
:

7

9/10/03

B. Ross

RESPONSE

This is Response is made to the Office Action mailed August 7, 2003 having a one-month period for response. In that Office Action, the Examiner maintains that two separate inventions were being claimed, the first invention described by claims 1 through 12, and a second invention described by claim 13 through 24. The Group I. claims 1-12 are elected with traverse.

The Examiner asserts that inventions I. and II. are related as combination and sub-combination. This characterization of the claims is unsupported. The Examiner cannot show that the elements of one of the independent claims 1 or 13 are fully present in the other of those claims so as to constitute a sub-combination of that other claim. In particular, both claims call for two vehicle components, either a tractor and trailer in claim 1 or a first vehicle portion and a second vehicle portion in claim 13. Both claims call for two hitch mechanisms, one associated with the first vehicle/tractor, the other associated with the second vehicle/trailer. The claims are thus coextensive insofar as they both claim the same four significant elements. The vehicle portions are more particularly identified in the claim 1 and are left more generally described in claim 13 whereas the hitch components are more particularly described in claim 13 and left more generally described in claim 1. This does not make either a sub-combination of the other.

Furthermore, a restriction requirement is clearly unsupported in view of MPEP § 806.03 which states:

SEP 09 2003

Application No. 10/068,973
Reply to Office Action of August 7, 2003

806.03 Single Embodiment, Claims Defining Same Essential Features

OFFICIAL

Where the claims of an application define the same essential characteristics of a *single* disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are but different definitions of the same disclosed subject matter, varying in breadth or scope of definition.

The application describes but a single embodiment. As explained above, the presented independent claims 1 and 13 claim the same four essential elements and vary in scope only with respect to those individual essential element characteristics. Accordingly, the restriction is unsupported.

Reconsideration and withdrawal of the restriction and examination and allowance of all pending claims 1-24 are respectfully requested. The Examiner is further requested to confirm receipt and consideration of the IDS and seven references filed November 25, 2002.

Respectfully submitted,

Sean Mullaney et al.

8 Sept 2003
(Date)

By:

JOHN JAMIESON, JR.

Registration No. 29,546

AKIN GUMP STRAUSS HAUSER & FELD LLP

One Commerce Square

2005 Market Street, Suite 2200

Philadelphia, PA 19103-7013

Telephone: 215-965-1200

Direct Dial: 215-965-1310

Facsimile: 215-965-1210

E-Mail: jjamieson@akingump.com

JJJ/vbm

**AKIN GUMP STRAUSS HAUER & FELD LLP
ATTORNEYS AT LAW**

One Commerce Square
2005 Market Street, Suite 2200
Philadelphia, PA 19103

TELEPHONE: (215) 965-1200 - FACSIMILE: (215) 965-1210
E-MAIL: jjamieson@akingump.com

**RECEIVED
CENTRAL FAX CENTER**

SEP 09 2003

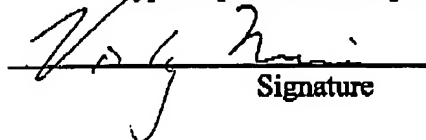
CERTIFICATION OF FACSIMILE TRANSMISSION

I hereby certify that this paper is being facsimile transmitted
to the U.S. Patent and Trademark Office on the date shown below

OFFICIAL

Victorine Blanche Meise

Type or print name of person signing certification

 Sept. 8, 2003
Signature Date

FACSIMILE COVER SHEET

Examiner: Ali F. Abdelwahed

FAX No.: 703-872-9306

Group Art Unit: 3712

Date: September 8, 2003

From: John Jamieson, Jr.

FAX Operator: Victorine Meise

Re: U.S. Patent Application No. 10/068,973 of Sean Mullaney et al., filed February 7, 2002,
for "Remote-Controlled Tractor Trailer Toy"

Title of Paper sent via Facsimile: RESPONSE

Time: _____

Akin Gump File No: 204110.0163/163US

Page 1 of 3 pages

**IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CONTACT
VICTORINE MEISE AT 215-965-215-965-1227**

**THIS FACSIMILE MESSAGE IS CONFIDENTIAL AND MAY CONTAIN ATTORNEY PRIVILEGED
INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR COMPANY NAMED ABOVE.**

If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately call us so that we may arrange for the return of the original message to us. Thank you!

7033882 v1